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Chandrika Vs. George Alexander

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Court : Kerala

Decided On : Jul-24-2015

Judge : Honourable Mr.Justice Thottathil B.Radhakrishnan

Appellant : Chandrika

Respondent : George Alexander

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN & THE HONOURABLE MR. JUSTICE SUNIL THOMAS FRIDAY, THE24H DAY OF JULY20152ND SRAVANA, 1937 RFA.No. 647 of 2013 () ---------- (AGAINST THE

ORDER
/

JUDGMENT
IN OS1302005 of SUB COURT, CHERTHALA DATED2802-2009) APPELLANT(S)/DEFENDANT : ---------- CHANDRIKA, AGED60YEARS, D/O. KALYANIAMMA, RESIDING AT PADINJARA KUNNATHUKAVIL, BHAGAVATHIPARAMBU, VALAMANGALAM, VADAKKU, THURAVOOR SOUTH VILLAGE, CHERTHALA ALAPPUZHA DISTRICT. BY ADV. SMT.JOLIMA GEORGE RESPONDENT(S)/PLAINTIFF : ----------

GEORGE ALEXANDER, AGED58YEARS S/O. GEORGE, VATTAKKATTUSSERIL VALAMANGALAM NORTH MURI, THURAVOOR SOUTH VILLAGE CHERTHALA, ALAPPUZHA DISTRICT-688 532. R1 BY ADV. DR.V.N.SANKARJEE R1 BY ADV. SRI.V.N.MADHUSUDANAN R1 BY ADV. SMT.R.UDAYA JYOTHI R1 BY ADV. SMT.K.S.SANDHYA R1 BY ADV. SMT. K.P.NEETHA THIS REGULAR FIRST APPEAL HAVING BEEN FINALLY HEARD ON2107- 2015, ALONG WITH RFA. 348/2015, THE COURT ON247/2015 DELIVERED THE FOLLOWING: THOTTATHIL B. RADHAKRISHNAN & SUNIL THOMAS, JJ.

- - - - - - - - - - - - - - - - - - - C.M.Appln.No.458/2013 & RFA No.647/ 2013 & C.M.Appln.No.285/2015 & RFA No.348/2015. - - - - - - - - - - - - - - - - - - Dated this the 24th day of June, 2015 COMMON

JUDGMENT

Sunil Thomas, J.

These appeals are directed against the judgment and decree of the Sub Court, Cherthala, in O.S.No.130/2005 dated 28/2/2009 in a suit for specific performance of an agreement for sale. The defendant is the appellant in both the appeals.

2. The plaintiff filed O.S.No.130/2005 before the Sub Court, Cherthala, for specific performance of an agreement dated 10/6/2005 for sale of the property having an extent of five cents with a house therein, belonging to the defendant. It was stated that the agreement was for a total consideration of Rs.2,75,000/-, of which Rs.50,000/- was paid in advance. It was alleged that in spite of execution of the above agreement, the defendant failed to perform her part of the contract and hence, the suit was filed. RFA Nos.647/2013 & another 2 3. The defendant appeared and filed the written statement admitting the execution of the document, but, contending that it was executed under financial constraints. It was also alleged that she was willing to perform her part of the contract, but the plaintiff was not ready and willing to perform his part of the contract and thereby the plaintiff committed the default. She alleged that she had sustained a loss of Rs.50,000/- and hence, raised a counter claim.

4. On the side of the plaintiff, PWs1 and 2 were examined and Exhibits A1 to A13 were marked. On the side of the defendant, she was examined as DW1 and Exhibits B1 to B6 were marked. The court below, on an evaluation of the oral and documentary evidence, held that the plaintiff succeeded in proving his case and decreed the suit. Counter claim was dismissed.

5. Aggrieved by the judgment and decree granting a decree for specific performance, the appellant has filed RFA No.647/2013. Since there was a delay of 1552 days in preferring the appeal, C.M.Appln.No.458/2013 was filed along with the appeal to condone the delay. Challenging the decree to the RFA Nos.647/2013 & another 3 extent of dismissing the counter claim, RFA No.348/2015 has been filed. Delay of 1734 days had occurred in preferring that appeal, which was sought to be condoned by filing C.M.Appln. No. 285 of 2015. The respondent has filed detailed counter affidavits traversing the various allegations in the petitions.

6. Heard both sides in the delay condonation applications and examined the records.

7. In C.M.Appln.No.458/2013 in RFA No.647/2013, according to the defendant/appellant, after the suit was decreed on 28/2/2009, all the documents relating to the case were handed over to the learned counsel appearing for her before the court below, who assured to file an appeal. However, the counsel did neither take any steps nor inform the appellant about the filing of the appeal. In the meanwhile, the respondent filed I.A.No.1171/2012 for execution of the decree in which notice was served on the defendant/appellant herein. Only when the notice was served, she came to know that there was inaction on the part of the counsel, in spite of frequent visit by the son-in- law of the petitioner to the counsel's office. It was claimed that the appellant was a widow, has studied only upto 7th standard RFA Nos.647/2013 & another 4 and had no one to support her.

8. In C.M.Appln. No.285/2015 in RFA No.348/2015, the petitioner sought to condone the delay of 1734 days on the same set of reasons as mentioned in C.M.Appln. No.458/2013 in RFA No. 647/2013.

9. There is no dispute that there is long delay in preferring both the appeals. The only reason stated by the defendant/appellant for the delay is that though she had entrusted the case file promptly to the counsel, the counsel did not initiate any proceedings to file the appeals. According to her, she came to know about the non filing of the appeals only when the notice in I.A. No.1171/2012 was received by her. However, in both the applications, the details regarding the date of entrustment with the lawyer, the name of the lawyer, the date when she met the lawyer thereafter and whether she had, in the meanwhile, pursued the matter are not disclosed.

10. It is pertinent to note that even according to the petitioner, her son-in-law had been contacting the lawyer regularly, but he was allegedly misled. It is pertinent to note that the appellant did not pursue of her own. Another contention RFA Nos.647/2013 & another 5 of the appellant is that she is a widow and has studied only upto 7th standard and she depends on the others. However, in spite of all her claimed handicap, she voluntarily entered into an agreement for sale, received consideration and thereafter had been contesting the case before the court below. The claim that she is uneducated and that she is a widow did not in any manner stood in the way of contesting the suit on merits, to instruct the lawyer and to tender oral evidence.

11. In the above circumstances, the contention set up in the applications, which even otherwise is very vague regarding the unduly wrong delay, cannot be accepted in its face value. We find no reason to take a lenient view, in spite of the settled legal position that if there is nothing on record to show that the party seeking condonation of delay is not actuated by motives or the prayer was intended to delay the proceedings, he is entitled for relief. We are unable to apply that principle in this case. Hence, there is no merit in these C.M.Applications, which are liable to be dismissed. In the result, C.M.Appln.No.458/2013 in RFA No.647/2013 and C.M.Appln.No.285/2013 in RFA No.285/2013 are dismissed. RFA Nos.647/2013 & another 6 Consequently, appeals are barred by limitation. Hence, both the appeals are rejected. The court fee paid on these appeals will be refunded to the appellant through her counsel appearing before this Court. Sd/- THOTTATHIL B.RADHAKRISHNAN Judge Sd/- SUNIL THOMAS Judge dpk /true

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